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Attorneys for Defendants
Walmart, Inc. &
Wal-Mart Real Estate Business Trust

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAWN-MICHELLE HAYES, an individual,

Plaintiff,

v.

WAL-MART REAL ESTATE BUSINESS
TRUST, a foreign business trust; WALMART,
INC., d/b/a WALMART #2592, a foreign
corporation; DOES 1 through 10; ROE
CORPORATIONS 11 through 20; and ABC
LIMITED LIABILITY COMPANIES 21
through 30,

Defendants.

Case No.:

[District Court, Clark County Case No.: A-20-
816334-C, Dept. No.: XI]

**PETITION FOR REMOVAL OF CIVIL
ACTION BY DEFENDANTS WALMART,
INC. & WAL-MART REAL ESTATE
BUSINESS TRUST**

[JURY DEMAND]

COMES NOW Petitioners WALMART, INC. (hereinafter “Walmart”) and WAL-MART REAL
ESTATE BUSINESS TRUST (hereinafter “the Trust”) (collectively “Defendants”), by and through
their attorneys, the law offices of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submit and
respectfully show:

I.

Petitioners WALMART, INC. & WAL-MART REAL ESTATE BUSINESS TRUST are
Defendants in the above-entitled action.

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2 II.

3 The above-entitled action was commenced by Plaintiff DAWN-MICHELLE HAYES
4 (hereinafter "Plaintiff") on June 10, 2020, in the Eighth Judicial District in and for Clark County, State
5 of Nevada. Plaintiffs served a summons and copy of their operative Complaint on Walmart on June 26,
6 2020. True and correct copies of Plaintiff's Complaint and Summons are attached hereto as **Exhibits**
7 **"A" and "B,"** respectively. Defendants filed an Answer on July 9, 2020. A true and correct copy of
8 Defendant's Answer is attached hereto as **Exhibit "C."** On July 14, 2020, Plaintiff filed a Petition for
9 Exemption from Arbitration (the "Petition for Exemption") in which Plaintiff states on page 5 that
10 Plaintiff's past medical damages now total \$151,154.16. A true and accurate copy of Plaintiff's Petition
11 for Exemption is attached hereto as **Exhibit "D."**

12 III..

13 This Petition is timely filed pursuant to 28 U.S.C. § 1446(b).

14 IV.

15 This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), and
16 is one which may be removed to this Court by Petitioner, pursuant to 28 U.S.C. § 1441(a).

17 V.

18 Petitioner is informed, believes, and thereon alleges that Plaintiff Dawn-Michelle Hayes is, and
19 was at the time this action was commenced, a citizen of the State of Nevada.

20 VI.

21 Petitioner Walmart Inc. is, and was at the time this action was commenced, a Delaware
22 corporation with its principal place of business in the State of Arkansas, and therefore a citizen of the
23 State of Delaware and a citizen of the State of Arkansas.

24 VII.

25 Petitioner Wal-Mart Real Estate Business Trust is, and was at the time this action was
26 commenced, a Delaware corporation with its principal place of business in the State of Arkansas, and
27 therefore a citizen of the State of Delaware and a citizen of the State of Arkansas.

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2 VIII.

3 The above-entitled civil action is for personal and economic damages Plaintiff allegedly incurred
4 from an incident at a Walmart in North Las Vegas, Nevada.

5 IX.

6 A copy of Defendant's Petition For Removal Of Civil Action, seeking removal of the above-
7 entitled action to the United States District Court, District of Nevada, together with a copy of the
8 Summons and Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for
9 the Eighth Judicial District Court in and for Clark County, Nevada.

10 X.

11 True and correct copies of all pleadings and papers served upon Petitioner in the above-entitled
12 action are filed herewith.

13 XI.

14 This Petition is filed with the Court within thirty (30) days after Petitioner first learned that
15 Plaintiff is seeking reimbursement of medical expenses totaling \$154,151.16, as is evidenced on p. 5
16 of Plaintiff's Petition for Exemption (Exhibit "D"). Plaintiff is thus clearly seeking over \$75,000 in
17 total damages, and Plaintiff's Petition for Exemption is the "first paper" referencing the fact that
18 Plaintiff is seeking damages that clearly exceed the \$75,000.00 federal diversity jurisdiction threshold.

19 XII.

20 Plaintiff's claims for damages, as well as the complete diversity of the parties, meet the
21 requisite requirements set forth by 28 U.S.C. §1441(b) and 29 U.S.C. §1332.

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PRAYER

WHEREFORE, Defendant prays that the above-entitled action be removed from the Eighth Judicial District Court in and for Clark County, Nevada, to this Court.

DATED this 21st day of July, 2020.

PHILLIPS, SPALLAS & ANGSTADT LLC

/s/ Daniel E. Joslyn

DANIEL E. JOSLYN, ESQ.
Nevada Bar No.14725
504 South Ninth Street
Las Vegas, Nevada 89101

*Attorneys for Defendants
Walmart, Inc. &
Wal-Mart Real Estate Business Trust*

DECLARATION OF DANIEL E. JOSLYN, ESQ.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, DANIEL E. JOSLYN, ESQ. declare under penalty of perjury that the foregoing is true and correct:

1. I am an attorney, duly licensed and authorized to practice law within the courts of the State of Nevada.

2. I am an attorney in the law firm of PHILLIPS, SPALLAS & ANGSTADT, LLC, representing Petitioners Walmart, Inc. & Wal-Mart Real Estate Business Trust, in the case of *Dawn-Michlle Hayes v. Wal-Mart Real Estate Business Trust, et al.*, pending in the Clark County District Court, Case No. A-20-8166334-C, filed in Department No. XI, of the Eighth Judicial District Court, in and for Clark County, Nevada. True and correct copies of Plaintiff's Complaint and Summons are attached hereto as Exhibit A and Exhibit B, respectively. I have prepared and read the foregoing Petition for Removal of Civil Action and know the matters set forth to be true and correct to the best of my knowledge and belief.

3. The above-entitled action was commenced on June 10, 2020, in the Eighth Judicial District Court in and for Clark County, Nevada, and is now pending in that Court. Defendant filed its Answer on July 9, 2020. A true and correct copy of Defendant's Answer is attached hereto as Exhibit C. On July 14, 2020, Plaintiff filed a Petition for Exemption from Arbitration in which it was stated that she is seeking past medical damages totaling \$151,154.16 for alleged injuries allegedly sustained at a Walmart store in North Las Vegas, Nevada. A true and correct copy of Plaintiff's Petition for Exemption is attached hereto as Exhibit D.

4. On July 21, 2020, I caused to be filed with the County Clerk of the Eighth Judicial District Court, in and for Clark County, Nevada, a Notice of Removal to Federal Court, seeking removal of the above-mentioned action to the United States District Court, District of Nevada, together with a

1 true and correct copy of this Petition for Removal of Civil Action, by depositing such copy with the
 2 Deputy Clerk in the County Clerk's Office, Clark County Courthouse, 200 Lewis Avenue, Las Vegas,
 3 Nevada 89101.

4 5. This Petition is filed with this Court within thirty (30) days after being served with
 5 Plaintiff's Petition for Exemption which is the "first paper" from which the amount in controversy may
 6 be ascertained in the above-entitled action. See 28 U.S.C. §1446(b). Plaintiff's Petition for Exemption
 7 indicates they are seeking a total past medical damages award of at least \$151,154.16 for alleged injuries
 8 allegedly sustained at a Walmart store in North Las Vegas, Nevada. Therefore, Plaintiff's claimed
 9 damages exceed the jurisdiction requirement. See Ex. D; 28 U.S.C. §1332(a); *Singer v. State Farm Mut.*
 10 *Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (holding the "court may consider facts in a removal
 11 petition and may require parties to submit summary-judgment-type evidence" to determine the amount
 12 in controversy).

13 6. I caused to be served copies of the Notice of Removal to Federal Court and the Petition
 14 For Removal Of Civil Action upon Plaintiff by depositing them in the United States Mail, on July 21,
 15 2020, in an envelope properly addressed, with sufficient postage affixed, to:

16 BRIAN D. NETTLES, ESQ.
 17 CHRISTIAN M. MORRIS, ESQ.
 18 RACHEAL A. ROSS, ESQ.
 19 NETTLES MORRIS
 1389 Galleria Dr
 Henderson, NV 89014

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1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
2 true and correct.

3 Executed this 21st day of July, 2020.

4 **PHILLIPS, SPALLAS & ANGSTADT, LLC**

5 */s/ Daniel E. Joslyn*
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7 DANIEL E. JOSLYN
8 Nevada Bar No. 14725
9 504 South Ninth Street
10 Las Vegas, Nevada 89101

11 *Attorneys for Defendants*
12 *Walmart, Inc. &*
13 *Wal-Mart Real Estate Business Trust*
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2020, I served a true and correct copy of the foregoing, **PETITION FOR REMOVAL OF CIVIL ACTION BY DEFENDANTS WALMART, INC. & WAL-MART REAL ESTATE BUSINESS TRUST [JURY DEMAND]**, as follows:

☐ By facsimile addressed to the following counsel of record, at the address listed below:

☐ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ By Hand Delivery (ROC); and/or

☒ By Electronic Filing/Service Notification to:

ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
BRIAN D. NETTLES, ESQ. Nevada Bar No. 7462 CHRISTIAN M. MORRIS, ESQ/ Nevada Bar No. 11218 RACHEAL A. ROSS, ESQ. Nevada Bar No. 14943 NETTLES MORRIS 1389 Galleria Drive, Suite 100 Henderson, Nevada 89014	702-434-8282 702-434-1488 (Fax)	Plaintiff

/s/ Joshua J. Kephart

An Employee of PHILLIPS, SPALLAS & ANGSTADT, LLC